

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 06039**, a proposed text amendment to Title 27 of the Lincoln Municipal Code, requested by the Director of Planning, to allow outdoor dining, when associated with a restaurant, in the front yard of certain zoning districts.

STAFF RECOMMENDATION: Approval, as revised on 6/21/06.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 06/21/06
Administrative Action: 06/21/06

RECOMMENDATION: Approval, as revised 8-0 (Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseys absent).

FINDINGS OF FACT:

1. The proposed amendments to the Zoning Ordinance are as follows: To allow outdoor dining, when associated with a restaurant, in the front yard of the O-3, B-1, B-2, B-3, B-4, B-5, H-1, H-2, H-3, H-4, I-1, I-2, and I-3 zoning districts; by amending Section 27.71.100 where patios and paved terraces are allowed in the front yard; by amending Section 27.71.115 to allow canopies in the front yard in the O-3, B-3, B-5, H-4, I-2 and I-3 districts; by adding a section to Chapter 27.03 to add a definition for outdoor dining; by amending Section 27.71.030 to add the O-3 district; by amending Section 27.27.070 to require the entire front yard to be landscaped, except for necessary paving of walkways and driveways to reach parking and loading areas, provided that any driveway in the front yard shall be substantially perpendicular to the street and shall not be wider than thirty feet; by amending Chapter 27.67, Parking, to exempt outdoor dining off-street parking requirements.
2. The staff recommendation of approval, as revised on 6/21/06, is based upon the "Analysis" as set forth on p.2-3, concluding that outdoor dining would help encourage outdoor activity and encourage pedestrian and commercial activity, and add aesthetic value to the streetscape.
3. The minutes of the public hearing before the Planning Commission are found on p.6-7.
4. There was testimony in support from a bistro owner in Edgewood and by Coby Mach on behalf of the Lincoln Independent Business Association (p.7). The record also consists of two communications in support from Kent Thompson of Thompson Realty Group and Fred Hoke on behalf of the Home Builders Association on Lincoln (p.10-11).
5. There was no testimony in opposition.
6. On June 21, 2006, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval.
7. After the Commission hearing, staff realized that the proposed new definition for "outdoor dining" refers to this use as "... in a required front yard." This limitation was not intended and we will work with Law to submit a substitute ordinance with this wording removed.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: July 3, 2006

REVIEWED BY: _____

DATE: July 3, 2006

REFERENCE NUMBER: FS\CC\2006\CZ.06039

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JUNE 21, 2006 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No.06039

PROPOSAL: Allow outdoor dining, when associated with a restaurant, in the front yard of the O-3, B-1, B-2, B-3, B-4, B-5, H-1, H-2, H-3, H-4, I-1, I-2, and I-3 zoning districts. Amend where patios and paved terraces are allowed in the front yard in Section 27.71.100. Amend Section 27.71.115 to allow canopies in the front yard in the O-3, B-3, B-5, H-4, I-2 and I-3 districts. Amend Section 27.03 to add a definition for outdoor dining. Amend Section 27.71.030 to add the O-3 district. Amend Section 27.27.070 to require the entire front yard to be landscaped, except for necessary paving of walkways and driveways to reach parking and loading areas, provided that any driveway in the front yard shall be substantially perpendicular to the street and shall not be wider than thirty feet. Amend Chapter 27.67-Parking to exempt outdoor dining off-street parking requirements.

CONCLUSION: Outdoor dining in front yards should encourage pedestrian and commercial activity, add aesthetic value to the streetscape.

RECOMMENDATION:

Approval

ANALYSIS:

1. Outdoor dining is considered accessory to a restaurant and is permitted today, as long as it remains within the building lines of the lot. The proposed amendment would permit outdoor dining in the front yard area.
2. The proposed outdoor dining would be similar to sidewalk cafes. Sidewalk cafes are allowed in "B" zoned districts under Chapter 14.50. Outdoor dining would be allowed in the front yard whereas, sidewalk cafes are allowed in the public right-of-way.
3. Outdoor dining would help encourage outdoor activity and add to the pedestrian environment. It places more activity along the street, which can encourage neighborhood social activity and further encourages walking.
4. Allowing outdoor dining **does not** automatically expand the area of alcohol sales. In most districts, a special permit is required to sell on-sale alcohol, the special permit area would need to be expanded in accordance with LMC27.63.680. This expansion must be approved by Planning Commission. In the B-2, B-4 and B-5 districts where on-sale of alcohol is a conditional use, those conditions must be met.
5. Noise is regulated by Lincoln Municipal Code 8.24.090-Noise Control Ordinance. No special conditions are being proposed for noise in connection with outdoor dining.
6. Staff is proposing that all outdoor dining be exempt from the parking requirement. Currently outdoor dining would be considered floor area and require off street parking if covered by a

canopy and fenced in some manner, but not if the area was open to the sky or using umbrellas over individual tables.

7. The O-3 district is the only district of the newer business zoning districts that allows drives parallel to the street in the front yard. The proposed amendment to the O-3 district would only allow driveways in the front yard if they are substantially perpendicular to the street and not wider than 30 feet, same as the O-2, B-2, B-5, H-4, I-1, I-2 and I-3 districts.
8. The proposed amendment to Section 27.27.070 would require the entire front yard setback in the O-3 district to be landscaped except for necessary paving of walkways and driveways to reach parking and loading areas.
9. The proposed text was presented to the Mayor's Neighborhood Roundtable on June 8, 2006. There was no opposition to the proposed outdoor dining.
10. Following is the proposed text:

27.71.030 Front and Side Yards; Driveways.

A driveway shall be permitted within the required front and side yards only if the driveway provides a connection to a parking space that is or will be located as permitted in this title, provided that in the O-2, O-3, B-2, B-5, H-4, I-1, I-2, and I-3 districts the driveway shall be substantially perpendicular to the street and shall not be wider than thirty feet. Vehicle stacking for drive-in facilities shall be permitted within the required side yard if such side yard does not abut a residential district. (Ord. 18687 §29; March 20, 2006; prior Ord. 16481 §1; September 20, 1993: Ord. 15307 §1; October 2, 1989: Ord. 14466 §1; August 18, 1986: Ord. 13469 §1; September 27, 1982: Ord. 12571 §375; May 8, 1979).

27.71.100 Porches, Balconies, Patios, and Terraces in Front Yards.

An open, unenclosed porch may project into a required front yard for a distance not exceeding ten feet; provided, however, such porches on residences in the R-1, R-2, R-3, R-4, R-5, R-6, R-7 and R-8 zoning districts which project into the required front yard no closer than ten feet from the street line may be enclosed under the following conditions:

- (a) The enclosed porch shall not be served by a heating system, cooling system, or plumbing;
- (b) At least forty percent of the other residences on the same frontage in the same zoning district extend into the required front yard a distance equal to or greater than the applicant's porch (for the purpose of this section, extensions into the front yard may be a porch, balcony, vestibule, or the main part of the building);
- (c) The applicant's porch shall not be located within any building line district; and
- (d) At least fifty percent of each exterior wall shall be transparent.

Balconies, ~~patios, and paved terraces~~ may project into a required front yard for a distance not exceeding six feet. In the B-1, B-3, B-4, H-1, H-2 and H-3 zoning districts, patios and paved terraces may project into a required front yard. In the O-3, B-2, B-5, H-4, I-1 I-2 and I-3 zoning districts, patios and paved terraces may project into a required front yard for a distance not to exceed fifteen (15) feet. An enclosed vestibule containing not more than forty square feet may project into a required front yard for a distance not to exceed four feet. This section shall not be interpreted as establishing a different required front yard in that district, nor shall this section be used to adjust front yard setbacks under Section 27.71.170 of this ordinance. (Ord. 14780 §21;

November 2, 1987: prior Ord. 13532 §1; January 17, 1983: Ord. 13067 §6; January 5, 1981: Ord. 12571 §382; May 8, 1979).

27.71.115 Canopies in Front Yard.

In O-3, B-1, B-2, B-3, B-4, B-5, H-1, H-2, H-3, H-4, ~~B-3 and I-1, I-2 and I-3~~ zoning districts, canopies may project into a required front yard; provided, that a five foot setback shall be maintained from the property line, and such canopies shall not cover more than six square feet of ground area per each foot of frontage, and no portion of the canopy shall be lower than nine feet above grade.

~~— In B-2 zoning districts, canopies may only project into the required front yard when the size and location of such canopies are approved as part of the use permit. (Ord. 16054 §1; February 18, 1992: prior Ord. 14581 §2; January 12, 1987: Ord. 14225 §1; September 30, 1985: Ord. 12571 §383a; May 8, 1979).~~

27.71.270 Outdoor Dining.

Outdoor dining is permitted in the B-1, B-3, B-4, H-1, H-2 and H-3 zoning districts in the required front yard. In the O-3, B-2, B-5, H-4, I-1, I-2 and I-3 zoning districts, outdoor dining is permitted in the required front yard; provided, that a five foot setback shall be maintained from the property line.

27.03. ?

Outdoor Dining

Outdoor dining shall mean an open area for dining in a required front yard when associated with a restaurant in which tables and seats are covered or uncovered by individual umbrellas or canopies (no tents or other types of temporary structures).

27.27.070 Height and Area Regulations.

Minimum area for the establishment of this district is two acres. The maximum height and minimum lot requirements within the O-3 Office Park District shall be as follows:

(a) General requirements:

(See following page)

(INSERT TABLE)

(b) There shall be a required front yard on each street side of a double-frontage lot;

©) There shall be a required front yard on each street side of a corner lot; provided,

however, that the buildable width of a lot of record on November 2, 1953, need not be reduced to less than thirty-five feet except where necessary to provide a required side yard of not less than five feet in place of one of the required front yards;

(d) The entire front yard shall be entirely landscaped, except for necessary paving of walkways and driveways to reach parking and loading areas, provided that any driveway in the front yard shall be substantially perpendicular to the street and shall not be wider than thirty feet.

~~(d)~~-(e) Open space requirements for residential use: A minimum amount of usable and accessible open space must be provided for each residential use. This requirement shall be as follows:

125 square feet for the first dwelling unit;

80 square feet per unit for the next four dwelling units;

25 square feet per unit for the next four dwelling units;

20 square feet per unit for each additional dwelling unit beyond nine.

This open space requirement may be met in the following manner:

(1) The required rear yard may be counted; however, the required front and side yards may not be counted toward fulfillment of said open space requirement; except for porches,

terraces, and balconies as permitted in Sections 27.71.100 and 27.71.110;

(2) Parking spaces and land occupied by any building or structure may not be counted toward fulfillment of this open space requirement;

(3) This required open space may be provided either on a balcony four or more feet in depth or on a rooftop, provided that the roof is designed and surfaced in such a manner that it may be developed with areas of planting, open space, recreation, and other uses that are consistent with similar uses in ground-level side and rear yards for dwellings. Such rooftop areas may not be occupied by structures such as vents, exhaust intakes, or other mechanical devices, except where they do not interfere with the usable nature of the open space;

(4) The depth-to-width ratio of any area used to fulfill the open space requirement may not exceed three to one if the smallest dimension of the open space is twelve feet or less.

~~(e)~~ (f) Accessory buildings which are attached to or located not more than ten feet from the main structure shall be considered a part of the main structure and shall comply with the height, and front, side, and rear yard requirements of the main structure. Accessory buildings not a part of the main structure may be located in the required rear yard if such yard does not abut a residential district, but such accessory buildings may not occupy more than thirty percent of the required rear yard and shall not be nearer than two feet to any side or rear lot line. Such detached accessory buildings shall not exceed fifteen feet in height. Accessory buildings not a part of the main structure, if located not less than sixty feet from the front lot line, may extend into the required side yard though not nearer than two feet to the side lot line. A garage which is entered from an alley shall not be located closer than ten feet to the alley line. (Ord. 12751 §11; November 5, 1979; prior Ord. 12571 §156a; May 8, 1979).

27.67.030 (h)

No parking space is required for the area of outdoor dining.

Prepared by:

Tom Cajka
Planner

DATE: June 6, 2006

APPLICANT: Marvin Krout, Director
Lincoln-Lancaster County Planning Department
555 S. 10th St. Suite 213
Lincoln, NE 68508

CONTACT: Tom Cajka, Planner
Lincoln-Lancaster County Planning Department
555 S. 10th St. Suite 213
Lincoln, NE 68508
(402) 441-5662

CHANGE OF ZONE NO. 06039

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 21, 2006

Members present: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson; Esseks absent.

Staff recommendation: Approval, as revised.

Ex Parte Communications: None

Staff presentation: Tom Cajka of Planning staff submitted an amendment to add B-4 to the revisions for Section 27.71.100, to allow patios and paved terraces in the B-4 district as well. Cajka explained that the purpose of this legislation is to allow outdoor dining in the front yard setback when associated with a restaurant. Currently, outdoor dining is allowed, but not within the setback area.

The definition of outdoor dining states:

Outdoor dining shall mean an open area for dining in a required front yard when associated with a restaurant in which tables and seats are covered or uncovered by individual umbrellas or canopies (no tents or other types of temporary structures).

This would be similar to what is allowed today under the sidewalk cafés, which are allowed in the B districts, the major difference being you can do sidewalk cafés in public right-of-way. This would not allow outdoor dining in public right-of-way but rather on the private property and within the front yard setback. It would be allowed in all districts that allow restaurants.

Cajka further explained that some of the other text changes are to allow patio and paved terraces to extend further into the front yard. Some districts are added where canopies in front yards could be allowed to match where outdoor dining is allowed.

The other part of this text change has to do with a clean-up item in reducing the front yard setback in commercial districts to 20 feet, to include the O-3 district, which was previously inadvertently omitted.

Strand noticed that heating systems are not allowed, and she wondered whether that included the portable propane heaters frequently used for outdoor dining on cooler spring and fall evenings. Cajka believes that restriction only applies when a porch is totally enclosed. That restriction has been in the ordinance for quite some time and is not being amended by this action. It applies to the residential districts. If you have a porch in a residential district, it can encroach into the front yard, but if you enclose it you cannot heat it. If it is within the building lines, it could be heated. You can heat an enclosed porch in the back of the house.

Carlson referred to the balconies or paved terraces portion. He does not believe the language restricts it to outdoor dining. Cajka stated that the balconies were not changed. The intent was to have patios and paved terraces allowed in the same area as outdoor dining. He agreed that the language does not limit it to just outdoor dining. Carlson wondered whether there might be other uses than outdoor

dining. Cajka explained that one of the reasons was that the older districts already allow parking lots and driving aisles so the staff did not see this having any negative effect, i.e. seeing tables and chairs rather than a parking lot.

Larson inquired about back yard setbacks and side yard setbacks. Cajka advised that this only applies to the front yard. The idea is that we want to put pedestrian activity along the streets. This would be an amenity to the streetscape.

Support

1. Monte Crandon(sp), a bistro owner in Edgewood at 5520 S. 56th Street, testified in support, particularly as to the amendment on parking. His is an independent establishment and they have been unable to have outside dining because of the parking restrictions. The outdoor dining is a drawing and impulse factor to any type of restaurant.

2. Coby Mach testified in support on behalf of the Board of Directors for **LIBA**. The restaurant business slows down during the summer months and these changes should be viewed as an opportunity to create alternative outdoor activity to enhance the dining atmosphere. It may provide economic benefit and could possibly have an impact on tax revenues collected by the city. This is pro-business and a positive community change.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 21, 2006

Carroll moved approval, as revised by staff today, seconded by Strand and carried 8-0: Cornelius, Taylor, Strand, Larson, Carroll, Sunderman, Krieser and Carlson voting 'yes'; Esseks absent. This is a recommendation to the City Council.

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Tom Cajka	DATE: June 2, 2006
DEPARTMENT: Planning	FROM: Chris Schroeder
ATTENTION:	DEPARTMENT: Health
CARBONS TO: EH File EH Administration	SUBJECT: Text Change 27.71, 27.27, 27.03 CZ #06039

The Lincoln-Lancaster County Health Department (LLCHD) has reviewed the change of zone application with the following noted:

- The LLCHD advises that owners of establishments wishing to provide an outdoor dining area, particularly those adjacent to residential zoning, should become familiar with Lincoln Municipal Code (LMC) 8.24.090 - Noise Control Ordinance. Specifically, establishments should carefully consider the installation of any sound amplification device such as televisions, loud speakers, public announcement systems, etc. LMC 8.24.090 has specific noise level limits for these types of equipment. These limits could potentially have an impact on the ability to use this type of equipment.
- In addition, if smoking will be allowed in a proposed outdoor dining area with a roof or other over head covering (awnings, etc.), relative to the enforcement of LMC 8.50 Lincoln Smoking Regulation Act the LLCHD has specific requirements for the amount of open space that is provided for proper ventilation. The LLCHD should be contacted prior to the construction of such outdoor dining areas.



"Sgt. Don Scheinost"
<lpd798@CJIS.CI.LINCOLN.
NE.US>

05/31/2006 09:14 AM

To Tom Cajka <TCajka@ci.lincoln.ne.us>

cc

bcc

Subject Text Change 27.71, 27.27, 27.03 - CZ06039

History:

 This message has been forwarded.

Mr. Cajka,

The Lincoln Police Department does not object to the proposed text changes to 27.71, 27.27, or 27.03, listed as CZ06039.

Sergeant Don Scheinost, #798
Lincoln Police Department
Management Services
(402) 441-7215
lpd798@ci.lincoln.ne.us



"Kent Thompson"
<KentT@thompsonrealtygrou
p.com>

06/01/2006 01:03 PM

To <MKrout@ci.lincoln.ne.us>

cc "Doug Rotthaus" <DougR@LincolnREALTORS.com>,
"Bruce" <Bohrer@kcoc.com>, "LIBA" <coby@liba.org>,
<nadine@hbal.org>, <TCajka@ci.lincoln.ne.us>

bcc

Subject Outdoor dining - YES

Owning several properties of the type you encouraging – I think this is an excellent idea.

I would like to point out the additional and possibly overlooked fact in the restaurant business – in light of our short seasonal outdoor dining –

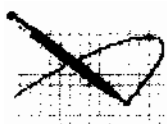
All Lincoln – not most – ALL restaurants experience a huge drop in volumes during the summer. This is due primarily to the large volume of other outdoor activities that people in Lincoln can and do enjoy doing.

The parking requirements won't be affected because the business volumes are off during this time. Contrary to the hiding businesses behind landscaping sentiment, people want to see that businesses are successful before attempting to try them out. The type of activity you suggesting will go a long ways towards helping these businesses succeed.

This change will most likely have a positive effect for the smaller restaurants.

Thanks you Marvin for your progress attitude towards making business happen in Lincoln!

Kent Thompson
421-7700



Marvin S Krout/Notes@Notes

06/05/2006 09:36 PM

To tcajka@lincoln.ne.gov

cc rhill@lincoln.ne.gov

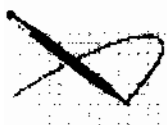
bcc

Subject Outdoor Dining Code Amendments

fyi

Marvin S. Krout, Director
Lincoln-Lancaster County Planning Department
tel 402.441.6366/fax 402.441.6377

— Forwarded by Marvin S Krout/Notes on 06/05/2006 09:36 PM —



"Fred Hoke"

<FredHoke@routers.com>

06/05/2006 08:13 PM

To <mkROUT@lincoln.ne.gov>

cc "Mark Hunzeker" <MHunzeker@Pierson-Law.com>,
<nadine@hbal.org>

bcc

Subject Outdoor Dining Code Amendments

Marvin:

We agree that outdoor dining should be encouraged and permitted. It's probably a six-month feature due to NE weather conditions. All restaurants experience a drop in volumes during the summer; there are large numbers of other activities that people in Lincoln can and do enjoy over the summer. Parking requirements should not be affected due to smaller volumes.

Since people prefer to try restaurants that are "busy", outdoor dining gives potential patrons a quick read on whether or not the restaurant is busy. Outdoor dining will go a long way toward helping restaurants succeed over the summer months.

If alcohol is a concern, perhaps limit drinks outdoors and/or require a meal with drinks if outdoors. We do not want neighborhoods upset with loud or rowdy behavior because drinking is permitted. These restaurants should not become outdoor pubs.

Thanks for taking up this issue and looking for ways to create this dining experience for many of our residents.

Fred Hoke

Government Relations Director

Home Builders Association of Lincoln

(C) 402-570-3772

Have a Great Day!